

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT NASHVILLE  
November 27, 2002 Session

**LANNY BERNARD v. ACTIVE USA, INC.**

**Direct Appeal from the Circuit Court for Robertson County  
No. 9419 John H. Gasaway, III, Judge**

---

**No. M2002-00663-WC-R3-CV - Mailed - February 4, 2003  
Filed - March 10, 2003**

---

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. In this appeal, the employer questions the trial court's findings as to the extent of vocational disability. As discussed below, the panel has concluded the evidence fails to preponderate against the findings of the trial court.

**Tenn. Code Ann. § 50-6-225(e) (2002 Supp.) Appeal as of Right; Judgment of the Circuit Court Affirmed**

JOE C. LOSER, JR., SP. J., delivered the opinion of the court, in which FRANK F. DROWOTA, III, C. J., and JOHN K. BYERS, SR. J., joined.

Luther E. Cantrell, Jr., Nashville, Tennessee, for the appellant, Active USA, Inc.

Andrew J. Blackwell, III, Madison, Tennessee, for the appellee, Lannie Bernard

**MEMORANDUM OPINION**

The employee or claimant, Mr. Bernard, initiated this civil action to recover workers' compensation benefits. Following a trial on November 26, 2001, the trial court awarded, among other things, permanent partial disability benefits based on 45 percent to the right arm. The employer has appealed.

Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2002 Supp.). The reviewing court is required to conduct an

independent examination of the record to determine where the preponderance of the evidence lies. Wingert v. Government of Sumner County, 908 S.W.2d 921, 922 (Tenn. 1995). The standard governing appellate review of findings of fact by a trial court requires the Special Workers' Compensation Appeals Panel to examine in depth a trial court's factual findings and conclusions. GAF Bldg. Materials v. George, 47 S.W.3d 430, 432 (Tenn. 2001). The trial court's findings with respect to credibility and weight of the evidence may generally be inferred from the manner in which the court resolves conflicts in the testimony and decides the case. Tobitt v. Bridgestone/Firestone, Inc., 59 S.W.3d 57, 61 (Tenn. 2001). The extent of an injured worker's vocational disability is a question of fact. Seals v. England/Corsair Upholstery Mfg., 984 S.W.2d 912, 915 (Tenn. 1999). Where the medical testimony in a workers' compensation case is presented by deposition, the reviewing court may make an independent assessment of the medical proof to determine where the preponderance of the proof lies. Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 167 (Tenn. 2002).

The claimant is approximately fifty years old with a high school education and experience as a heavy equipment operator and driver. His duties for his employer, Active USA, included preparation for delivery and delivery of Peterbilt tractors for piggyback delivery to customers and required repetitive use of the hands and arms. He gradually developed disabling pain in his right hand and elbow, which he reported to the employer. He was referred to Dr. Douglas Weikert.

Dr. Weikert diagnosed and treated right carpal tunnel syndrome and radial tunnel syndrome and estimated the claimant's permanent medical impairment to be 8 percent to the right arm. An independent medical examiner, Dr. David Gaw, estimated his permanent impairment to be 7 percent to the right arm, which he equated to 4 percent to the body as a whole. The claimant testified that he is unable to work because of a condition not related to this appeal.

The employer contends the award is excessive because it exceeds the maximum award contained in Tenn. Code Ann. § 50-6-207. The limitation does not apply where the only injury is to a scheduled member, such as the arm. Advo, Inc. v. Phillips, 989 S.W.2d 693, 695 (Tenn. 1998). Moreover, trial courts are not bound to accept physicians' opinions regarding the extent of a claimant's disability, but should consider all the evidence, both expert and lay testimony, to decide the extent of an employee's disability. Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 170 (Tenn. 2002). Once the causation and permanency of an injury have been established by expert testimony, the trial judge may consider many pertinent factors, including age, job skills, education, training, duration of disability, and job opportunities for the disabled, in addition to anatomic impairment, for the purpose of evaluating the extent of a claimant's permanent disability. McCaleb v. Saturn Corp., 910 S.W.2d 412, 416 (Tenn. 1995). Extent of vocational disability is a question of fact. Story v. Legion Ins. Co., 3 S.W.3d 450, 456 (Tenn. 1999).

Giving due deference to the finding of the trial court, we are unable to conclude the award is excessive. The judgment is therefore affirmed. Costs are taxed to the appellant.

---

JOE C. LOSER, JR.

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL

**LANNY BERNARD v. ACTIVE USA, INC.**

**Circuit Court for Robertson County  
No. 9419**

---

**No. M2002-00663-WC-R3-CV - Filed - March 10, 2003**

---

**JUDGMENT**

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by the appellant, Active USA, Inc., for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM